



RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT
FEDERAL ELECTION COMMISSION
Washington, DC 20463

2005 JUN -11 A 9: 22

May 31, 2005

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Allan D. Silberman
Director

SUBJECT: ADR 237 – Rick Penberthy, Rick for Congress and Doreen Penberthy, Treasurer
Recommend to Assign Case

SENSITIVE

On February 3, 2005 the ADR Office received from OGC/CELA MUR 5521 to review and determine its appropriateness for ADR processing. Based on that review, we determined that the case, **ADR 237**, is appropriate for ADR and recommend that it be assigned to the ADR Office.

Summary: The Complainant, i.e., Steve G. Hemmert, contends that Respondents failed to file timely the second quarter “Q 2”, report due on or before July 15, 2004. In addition, the Complainant notes that the subject report was not filed electronically when they expended more then \$50,000. Respondents contend that they filed the subject report by the due date of 7/15/04 -- the date the report was mailed to the Commission. Respondents acknowledge that they mistakenly concluded that since the election cycle-to-date contributions, not including candidate loans, totaled \$5,429 they were not required to file electronically. Respondents subsequently learned that a \$61,182 loan from the candidate coupled with the contributions received during the cycle triggered the electronic filing requirement. Respondents subsequently completed and uploaded a duplicate copy of the Q2 report, which was filed with the Commission on 8/4/04.

Attached for the Commission’s review is the *ADR Case Analysis Report on ADR 237* along with a copy of the EPS and ADR Rating Sheets. The *Case Analysis Report* includes an analysis of the case and a description of the issues that the ADR Office (ADRO) anticipates addressing if the case is assigned to ADR. In addition, the Report has been reviewed by OGC, which concurs in the description of the case. If the Commission concurs in the recommendation to assign the matter to ADRO, the above case description will be provided to Respondents as part of ADRO’s notification package sent to Respondents.

Recommendation:

1. Assign **ADR 237/MUR 5521** to the ADR Office for activation.

ADR CASE ANALYSIS REPORT

ADR Case: 237

Respondents: Rick for Congress
Rick Penberthy
Doreen Penberthy, Treasurer

MUR: 5521

Respondents' Rep: Doreen Penberthy

OGC Case Open Date: 8-26-04

Committee Type: Authorized

Date Forwarded to ADRO: 2-3-05

Committee's Name: Rick for Congress

Date Reviewed by ADRO: 2-15-05

District #/or State: FL – 5th C.D.

Tier Level: 4

Election Won/Lost Cycle: Lost Primary

EPS Rating: 4

Election Cycle: 2004

ADR Rating: 56

Complainant: Steven G. Hemmert

Summary of Complaint: Complainant contends that Respondents failed to file timely the second quarter "Q 2", report due on or before July 15, 2004. In addition, the Complainant notes that the subject report was not filed electronically when they expended more then \$50,000. The complainant points out that Respondents filed a hand-written report that was received at the Commission on 7/22/04. Complainant contends that Respondents should be viewed as a non-filer not a late filer and required to pay an administrative fine.

Respondents' Replies: Respondents contend that they filed the subject report by the due date of 7/15/04 -- the date the report was mailed to the Commission. Respondents acknowledge that they mistakenly concluded that since the election cycle-to-date contributions, not including candidate loans, totaled \$5,429 they were not required to file electronically. Respondents subsequently learned that a \$61,182 loan from the candidate coupled with the contributions received during the cycle triggered the electronic filing requirement. Following a series of problems with their software, Respondents were able to complete and upload a duplicate copy of the Q2 report, which was filed with the Commission on 8/4/04.

Alleged Violations: 2 U.S.C. §§ 434(a)(11)(A)(i), 434(a)(2)(A)(iii) and 11 C.F.R. §§104.18 and 104.5(a)(1).

Analysis: Campaign committees of candidates for the House are required to file reports of their financial activity electronically if their total contributions or expenditures exceed \$50,000 in a calendar year. The Campaign Guide for Congressional Candidates and Committees, advises that Candidate loans are contributions attributed to the \$50,000 electronic filing threshold. The regulations also specify that campaign committees must file quarterly reports no later than the 15th day following the close of the immediately preceding calendar quarter, i.e., on April 15, July 15, and October 15, etc. Respondents misunderstood the regulations that require campaign committees to file electronically

and to ensure that the reports are received at the Commission in accordance with the provisions of the regulations.

Issues:

- Electronic filing requirements 2 U.S.C. § 434(a)(11)(A)(i) and 11 C.F.R. § 104.18(a)
- Report filing dates 2. U.S.C. § 434(a)(2)(A)(iii) and 11 C.F.R. § 104.5(a)(1)

Related FEC Experience and Guidance: OGC and the ADR Office have had considerable experience in addressing the obligations of campaign committees to comply with provisions of the statute and regulations. In addition, the Commission's guidance in complying with the requirement to file electronically is spelled out in the Campaign Guide for Candidates and Committees and AO's.

Potential Terms of Settlement: Given Respondents apparent misunderstanding of the requirements of the regulations, attendance at a FEC sponsored seminar for campaign committees would be appropriate unless the Respondents plan on concluding their activity. In that event, filing for termination and a civil penalty may be in order.

ADR Director's Recommendation: Assign to ADRO

25199262587

ADR Office (ADRO) Case Selection Criteria for Assigning Cases to ADR Processes

In order for cases to be considered by the ADR Office, respondents will need to first indicate their desire to submit their case to ADR. Cases reviewed by the Office will be evaluated according to the following factors, which will identify cases that are considered appropriate for ADR and prioritize them for processing

MUR # 5521/ADR 237

	<u>No/False</u>	<u>Yes/True</u>
1. Some remedial action has been taken by Respondent to correct violation (score 0 or 5) • Respondent conveys desire to comply with law and accept responsibility for actions	0	5
2. Respondent is inexperienced (score: 0 or 5) • Respondent lacks knowledge in campaign finance matters	0	5
3. Amount of money at issue is limited (Below 10,000 (5), up to 50,000 (3), above 50,000 (1)) • Amount of money at issue is amenable to alternative resolution	5	3 1
4. Case involves a single, identified issue (score: 0 or 5) • Preference will be given to single as a opposed multi-issue case	0	5
5. Genuine <i>sua sponte</i> submission (score: 0 or 5) • Case submission is complete and lacks any gaps or discrepancies	0	5
6. "Accepted" allegation of FECA violation (score: 0 or 5) • Respondent admits or does not contest that a violation has occurred	0	5
7. Respondent has already "paid" for the same conduct at issue in complaint (score: 0 or 5) • Respondent has been assessed criminal or civil penalties for the conduct in question	0	5
8. Principal respondents have already filed complete and forthcoming response (score: 0 or 5) • Respondent has filed complete and forthcoming response to complaint	0	5
9. Violation appears not to have altered election outcome (score: 0 or 5) • Activity not conducted at critical time or significant in terms of overall campaign	0	5
10. Material facts are reasonably clearly known and identified (score 0 or 5) • Case lacks need for extensive fact-finding	0	5
11. Feasibility of reaching a voluntary resolution (score: 0 or 15) • Respondent's affirmative reply to letter conveys interest in voluntary resolution of case	0	15
12. Appropriate number of respondents (score: 0 or 5) • Appropriate number of respondents identified in case file	0	5
13. Commission interest in case (score: 0 or 10) • Commissioners have indicated interest in case (10) otherwise score "0"	0	10
14. Timely case (score 0 to 10) • Case is current, i.e. within 2 years of event (10) or beyond 2 years (0)	0	10
15. Worthy ADR action (score: 0 to 10) • EPS rating above 20 (10), between 19 and 0 (5) and below (score 0)	0	5 10

Maximum point total: 100.

56

25190262688